REMARKS

To avoid the necessity of an Appeal, Applicants respectfully request reconsideration of the present application based on the following remarks. Claims 1-25 and 28-52 are pending in the application.

Objections to the Claims

Applicants appreciate the Examiner's indication that claims 5, 6, 8-10, 12-17, 19, 20, 22-25, 32, 33, 35-37, 39-44, 46, 47 and 49-52 would be allowable if rewritten. Without prejudice or disclaimer, at this time Applicants elect not to rewrite the claims as suggested by the Office Action for reasons more fully apparent from below.

Claim Rejections Under 35 U.S.C. 103

Claims 1, 2, 3, 28, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,549,938 to Kilkki et al. ("Kilkki") in view of U.S. Patent No. 6,469,982 to Henrion et al. ("Henrion"). For reasons set forth more fully below, Applicants respectfully traverse this rejection.

Claim 1 (and claim 28 in means plus function form) explicitly require the steps of, *inter alia*:

> receiving a stream of data from the switching fabric;
> extracting flow identity information from the stream;
> updating counters corresponding to the stream;
> subjecting the stream to a decision making algorithm in the bandwidth scheduler based on the extracted flow identity information and the updated counters for that particular stream resulting in that the stream is accepted or rejected before said stream enters any queue of said switch.
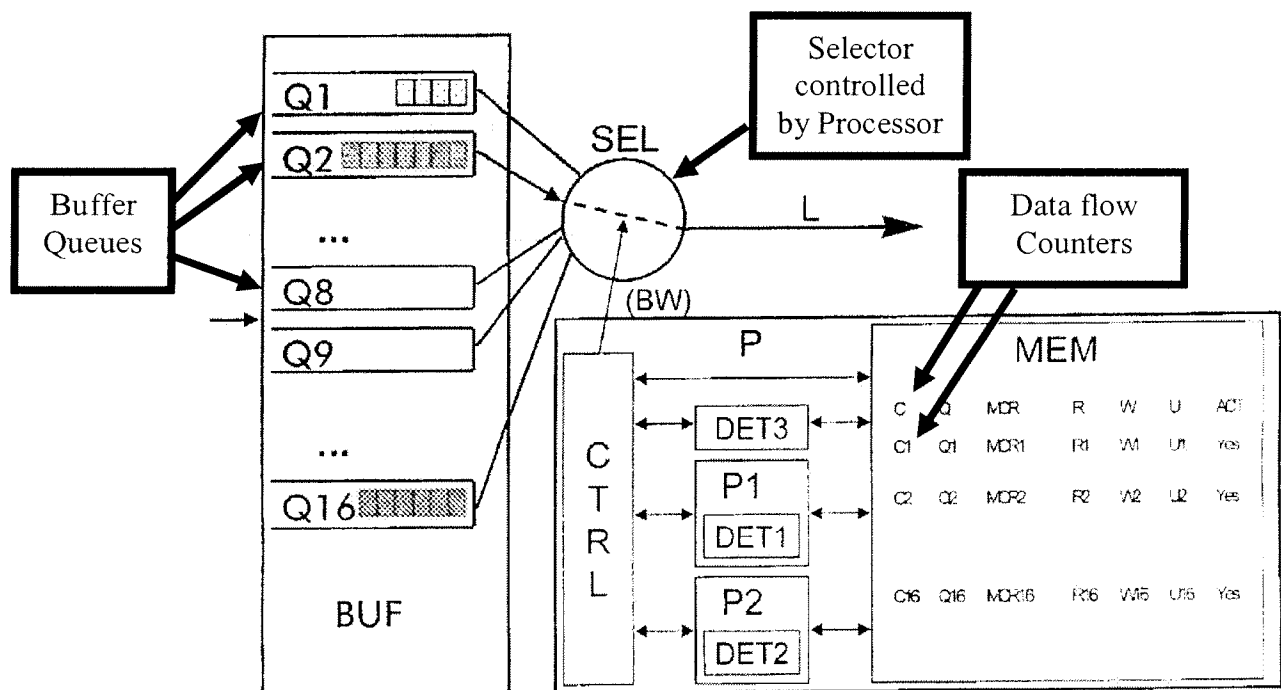
The Office Action relies primarily on Figure 9 and the associated descriptions in the specification of Kilkki for support for this rejection. Accordingly, Figure 9 of Kilkki is reproduced below for convenience.

FIG.9
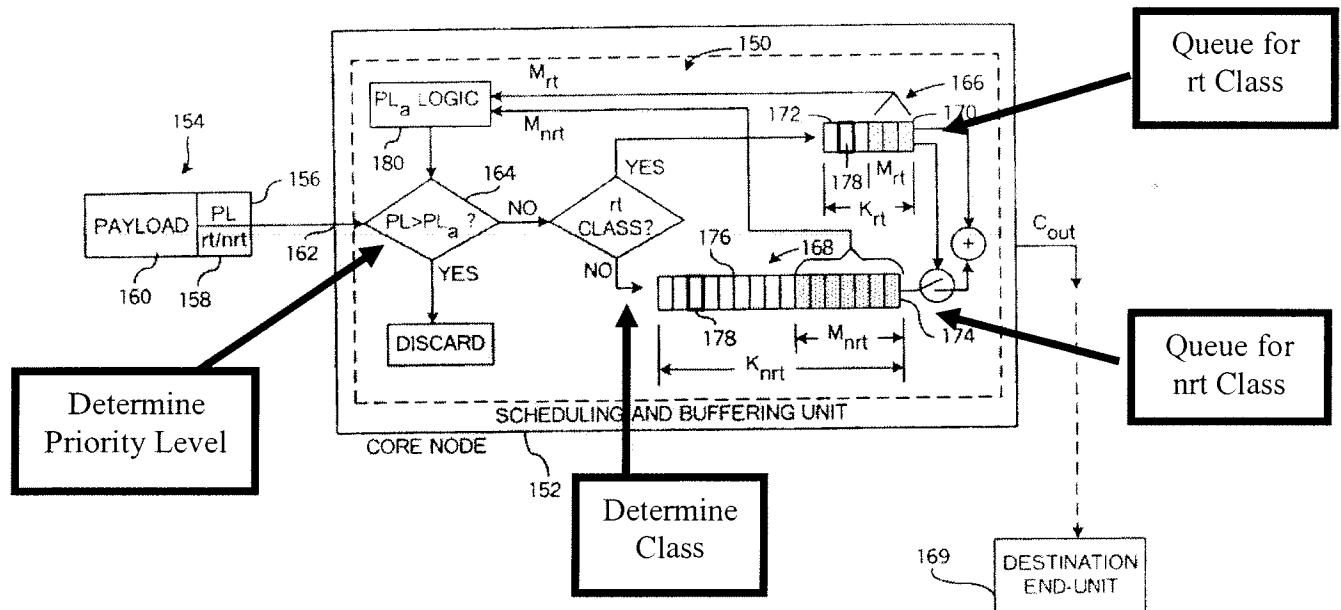
As can be clearly seen from Figure 9, Kilkki's "scheduling unit" compares a priority level (PL) of an ATM cell 154 to a threshold priority (PL_a) when deciding whether to discard the cell. It then places non-discarded cells in either a "rt" class queue 166 or a "nrt" class queue 168. The Office Action also relies on Henrion, the figure for which is reproduced below.

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Henrion discloses an "intelligent buffer" that schedules flows of data out of a buffer according to bandwidth reservation and sharing policies. As can be clearly seen above, data for respective flows are queued in queues Q1 – Q16, and then a processor P controls a selector SEL to allow the already-queued data to flow out of the buffers.

Even if, *arguendo*, Henrion could be combined with Kilkki, the alleged combination still would fail to meet the limitations of independent claim 1. Claim 1 clearly requires "subjecting the stream to a decision making algorithm in the bandwidth scheduler based on the extracted flow identity information and the updated counters for that particular stream resulting in that the stream is accepted or rejected before said stream enters any queue of said switch ."

The Office Action admits that Kilkki does not accept or reject streams based on updated counters for a particular stream, instead relying on Henrion for this subjection matter. However, Henrion's counters operate on data already in buffers Q1-Q16. Thus, it is impossible for Henrion to disclose or suggest accepting or rejecting streams based on updated counters for a particular stream before said stream enters any queue of the switch as required by independent claim 1. Moreover, by antecedent basis and explicit language, claim 1 clearly requires updating counters for a particular stream before said stream enters any queue, which neither Kilkki or Henrion discloses or suggests.[1] Accordingly, the Office Action fails to set forth a prima facie case of obviousness.

Moreover, Applicants submit that the hindsight combination of Kilkki with Henrion is not motivated by the references themselves. As set forth above, Kilkki merely compares a priority level PL of an ATM cell to a threshold. The priority level of the cell is simply a value that is placed in the cell by upstream nodes depending on upstream processing. Kilkki explicitly teaches that the scheduling unit in Figure 9 "make[s] decisions regarding the acceptance and rejection of packets based on the priority of a packet and the occupancy levels of the buffers in the particular core node 104. The core nodes, therefore do not need to obtain information regarding the properties of individual connections." (col. 12, lines 19-23, emphasis added). In other words, Kilkki explicitly teaches away from making decisions based on extracted flow

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[1]   Applicants also respectfully disagree with the Office Action's new position that Kilkki's comparison of priority level bits to a threshold equates with the claimed extracting of flow identity information.

information for a particular stream. So even if, *arguendo*, one skilled in the art would be led to combine Kilkki with Henrion, such skilled artisan would not incorporate any decision-making based on flow identity of particular streams into Kilkki's scheduling unit.

Accordingly, it is respectfully submitted that the alleged combination of Kilkki and Henrion does not disclose or suggest the explicit limitations of independent claim 1. For at least these reasons, independent claims 1 and 28, along with claims 2-3 and 29-30 that depend respectively therefrom, patentably define over Kilkki and Henrion and the rejection of these claims should be withdrawn.

Claim Rejections Under 35 U.S.C. 103

Claims 4, 18, 31 and 45 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kilkki and Henrion in view of U.S. Patent No. 6,628,609 to Chapman et al. ("Chapman"). Claims 7 and 34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kilkki and Henrion in view of Chapman and further in view of U.S. Patent No. 6,292,465 to Vaid et al. ("Vaid"). Claims 11 and 38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kilkki and Henrion in view of Vaid. Claims 21 and 48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kilkki and Henrion in view of U.S. Publication No. 2002/0097736 to Cohen ("Cohen"). For reasons set forth more fully below, these rejections are respectfully traversed.

The rejected claims all depend directly or indirectly from independent claims 1 and 28. These claims patentably define over Kilkki and Henrion for reasons more fully set forth above. The alleged combination of Kilkki and Henrion with Chapman, Vaid, and/or Cohen would still fail to meet the limitations of claim 1, and so the rejected claims are patentable for at least this reason.
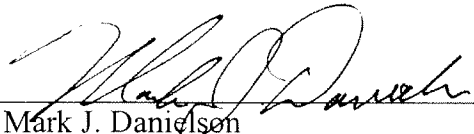
For at least these reasons, claims 4, 7, 11, 18, 31, 34, 38 and 45 patentably define over the cited prior art and the 103 rejection of these claims should be withdrawn.

Conclusion

All objections and rejections having been addressed, the application is believed to be in condition for allowance and Notice to that effect is earnestly solicited. If any issues remain which the Examiner feels may be resolved through a telephone interview, s/he is kindly requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,
PILLSBURY WINTHROP SHAW PITTMAN LLP

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Mark J. Danielson
(650) 233-4777
Please reply to customer no. 27,498

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Reg. No.

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